

### REMARKS

Claims 1-35 are currently pending in the subject application, and are presently under consideration. Applicant acknowledges with appreciation the indicated allowability of claims 3 and 22 subject to being amended to independent form. Applicant reserves the right to cast such claims in independent form at a later date. Favorable reconsideration of the application is requested in view of the comments herein.

#### **I. Rejection of Claims 1-2, 4-21, 23-35 Under 35 U.S.C. §103(a)**

Claims 1-2, 4-21, 23-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rom (U.S. Patent No. 5,450,616) in view of Fischer *et al.* (U.S. Patent No. 5,768,605). It is respectfully submitted that this rejection be withdrawn for at least the following reasons. The combination of Rom and Fisher does not teach or suggest the claimed invention.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Neither Rom nor Fischer *et al.* teach or suggest *transmitting a first portion of data at a first transmission and a second portion of the data at a second transmission*, as recited in independent claims 1, 19, 29, 32, and 35 of the subject application. The Examiner relies on col. 5, lines 10-16, col. 6, lines 20-50, and col. 8, lines 34-42 of Rom to teach such aspect of the claimed invention. However, col. 5, lines 10-16 of Rom describes a node which includes a transmitter for sending data and a receiver for receiving data. There is no mention or suggestion of transmitting and receiving a first portion of data and a second portion of data.

Col. 6, lines 20-50 of Rom describes transmitting feedback signals from the receiver to the transmitter of the node. The feedback signal occupies a field in the data packet and the data packet is transmitted from the receiver to the transmitter. The transmitter processor calculates and adjusts a power amplifier based on the feedback signal. Rom further describes transmitting a data packet from a first node to a second node and transmitting another data packet from the first node to a third node. There is no mention in col. 6, lines 20-50 of Rom of transmitting a first portion of data and a second portion of data. Rather, Rom describes transmitting the entire data packet.

Col. 8, lines 34-42 of Rom describes adjusting the transmission power of a data packet based on received power setting suggestions. Again, no mention or suggestion is made in this section of Rom regarding transmitting two portions of data at two different transmission powers. Instead, Rom is transmitting an entire data packet and adjusting one transmission power based on received suggestions.

The Examiner contends that identical data packages transmitted at two different power levels are two different data packages. The Examiner further contends that the two different data packages can be considered a first data portion and a second data portion. Applicant respectfully disagrees with the Examiner's contentions. The interpretations of the claims do not provide for identical data packages transmitted at two different power levels to be considered a first data portion and a second data portion. For instance, claim 1 recites "the power control module adapted to receive *a data packet having a first portion and a second portion* and transmit the first portion at a first transmission power and the second portion at a second transmission power." Accordingly, claim 1 requires a power control module adapted to transmit a portion of a data packet at a first transmission power and another portion of the same data packet at a second transmission power. Similar arguments can be made with respect to independent claims 19, 29, 32, and 35.

Fischer *et al.* does not make up for the aforementioned deficiencies of Rom. Fischer merely explains what a PLCP header and PLCP preamble are and what purpose they play in IEEE standard 802.11. Fischer *et al.* does not teach transmitting the PLCP header at one transmission power and the data portion at a second transmission power. The Examiner contends that "it is obvious that we can combined the method of data transmission of Rom with Fischer

data (PLCP), in order to provide different power level for different power of data packet for the purpose of the improving the performance of the wireless system.” However, the Examiner failed to set forth particular findings to support this conclusion, which showing must be clear and particular. *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 48 USPQ2d 1225 (Fed. Cir. 1998). Broad, conclusory statements regarding the teaching of multiple references, standing alone, are not “evidence.” *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999) (citing, *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993)). Moreover, as stated in *Okajima v. Bourdeau*, 261 F.3d 1350, 59 USPQ2d 1795 (Fed. Cir. 2001):

The level of skill in the art is a prism or lens through which a judge, jury, or the Board of Patent Appeals and Interferences views the prior art and the claimed invention. This reference point prevents these factfinders from using their own insight or, worse yet, hindsight, to gauge obviousness. Skill in the art does not act as a bridge over gaps in substantive presentation of an obviousness case, but instead supplies an important guarantee of objectivity in the process.

It is respectfully submitted that the Examiner has not provided or demonstrated a line of reasoning to show that there is proper motivation to make the suggested combination. Rom is directed to a method and apparatus for implementing a protocol for controlling transmitter power in a wireless LAN; while Fischer *et al.* is directed to an apparatus for ensuring that creating the necessary control signaling of multiple implementations of the power ramp operation of a radio transmitter. Neither Rom nor Fischer *et al.* discloses, teaches, or suggests transmitting different portions of a data packet at different power levels. Accordingly, it appears that the purported combination of references is based on improper hindsight, in which the present application provides the teaching and motivation.

Because neither Rom nor Fischer *et al.*, alone or in combination, teach or suggest each and every element as set forth in claims 1, 19, 29, 32, and 35, the combination of Rom and Fischer *et al.* do not make obvious such claims. Accordingly, withdrawal of this rejection and allowance of claims 1, 19, 29, 32, and 35 and claims 2-18, 20-28, 30-31, and 33-34, which respectively depend therefrom are respectfully requested.

## II. Objection of Claims 3 and 22

Claims 3 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3 and 22 respectively depend from claims 1 and 19, which are believed to be allowable for the aforementioned reasons. Accordingly, claims 3 and 22 are not obvious over the combination of Rom and Fischer *et al.* Withdrawal of this rejection and allowance of claims 3 and 22 are respectfully requested.

### CONCLUSION

The present application is believed to be condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

Should the Examiner believe that a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Respectfully submitted,

AMIN & TUROCY, LLP



Himanshu S. Amin

Reg. No. 40,894

AMIN & TUROCY, LLP  
24<sup>TH</sup> Floor, National City Center  
1900 East 9<sup>TH</sup> Street  
Cleveland, Ohio 44114  
Telephone: (216) 696-8730  
Facsimile: (216) 696-8731